

EMPOWER OVERSIGHT

Whistleblowers & Research



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VIA ELECTRONIC TRANSMISSION: [VACOFOIASERVICE@VA.GOV](mailto:vacofoiaservice@va.gov)

FOIA SERVICE

Department of Veterans Affairs
810 Vermont Avenue, NW
(005R1C) VACO
Washington, DC 20420

**RE: RECORDS REGARDING VA'S REFUSAL TO RESPOND TO CONGRESSIONAL
OVERSIGHT OF CONFLICTS OF INTEREST AND FAILURE TO SAFEGUARD MATERIAL
NON-PUBLIC INFORMATION**

Dear FOIA Officer:

Empower Oversight Whistleblowers & Research ("Empower Oversight") is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities help to hold those authorities accountable to act on such reports. Empower oversight also publishes information related to waste, fraud, abuse, corruption and misconduct, as well as information regarding whistleblower retaliation against those who report such wrongdoing.

We write today regarding the appearance of a conflict of interest by Department of Veterans Affairs staff administering our veterans' educational benefits and the Department's refusal to timely comply with related congressional oversight requests.

Through the GI Bill, Americans have long honored our veterans' service by providing them well-earned educational opportunities. As with all large government programs, the administration of these benefits is subject to a vast bureaucratic process—a process that should be free from improper influence, and even the appearance of improper influence.

However, according to whistleblower reports received by Empower Oversight, as well as witness statements and documents reportedly provided to Congress (Attachment A), an official at the Veterans Benefits Administration ("VBA"), Ms. Charmain Bogue, the Executive Director of VBA's Education Service, allegedly failed to recuse herself from VBA activity involving her husband's clients and his employers, Veterans Education Success ("VES") and Student Veterans of America ("SVA").

Four months ago, Senate Judiciary Committee Ranking Member Charles Grassley asked the Department a number of questions about Ms. Bogue’s participation in the announcement of an enforcement action advocated by her husband’s clients and employers.¹ The enforcement action, announced on March 9, 2020, would have denied veterans access to GI Bill benefits at certain educational institutions. Months later the Department “backed down” on July 2, 2020 after deciding that no such action was warranted.²

However, the announcement had done its damage. Days before the March 9 announcement, a Department official warned others to safeguard advanced notice of the announcement because publicly traded companies operated some of the impacted schools.³ Yet, market sensitive details were reportedly released during the trading day to VES, one the employers paying Ms. Bogue’s husband, and may have been leaked in the preceding weeks.⁴ The leaks appear to have negatively impacted stock prices, and the select few with inside knowledge of the Department’s plans could have profited from that information.⁵

Moreover, Senator Grassley’s letter also raised serious questions about several senior VBA officials, including Ms. Bogue’s boss and current Acting Undersecretary of Benefits Thomas Murphy.⁶ Mr. Murphy would have been responsible for ensuring that Ms. Bogue complied with ethics requirements and recused herself from any matters involving or otherwise benefiting her husband’s employers. However, according to whistleblower allegations described in the letter, Mr. Murphy has a history of alleged failure to follow controlling ethical standards, having been personally proposed for suspension for accepting gifts from outside stakeholders.⁷

Yet the Department has refused to provide any meaningful response in the four months since receiving these inquiries from the Ranking Member of the Senate Judiciary Committee (see Attachment B).⁸ Previous administrations have attempted to improperly slow-walk or ignore requests for information from the opposite political party when that party does not constitute a majority in Congress.⁹

To address such concerns, a policy adopted on July 20, 2017 and formally cited by the Justice Department’s Office of Legal Counsel (“OLC”) on February 13, 2019 requires that each Executive Branch agency “respect the rights of all individual Members [of Congress], *regardless of party affiliation*, to request information about Executive Branch policies and programs” and “use its *best efforts to be as timely and responsive as possible* in answering such requests.”¹⁰

¹ Letter from Senator Charles Grassley to Secretary Denis McDonough ([Apr 2, 2021](#)) (Attachment A).

² “VA backs down from plan to suspend University of Phoenix and other colleges from accessing GI Bill benefits,” *Washington Post* ([Jul 2, 2020](#)).

³ Letter from Senator Charles Grassley to Secretary Denis McDonough ([Apr 2, 2021](#)) (Attachment A) at 3.

⁴ *Id.* at 3-4.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*

⁸ Letter from Senator Charles Grassley to Secretary Denis McDonough ([Jul 20, 2021](#)) (Attachment B).

⁹ Letter from Senator Charles Grassley to President Donald J. Trump, ([Jun 7, 2017](#)).

¹⁰ “Requests by Individual Members of Congress for Executive Branch Information” *DOJ Office of Legal Counsel*, 43 Op. O.L.C. ___ ([Feb 13, 2019](#))(emphasis added).

Unless the current administration has rescinded the policy referenced by OLC without informing the public, the Department of Veterans Affairs appears to be in violation by essentially ignoring serious questions from the Ranking Member of the Senate Judiciary Committee for four months. That manifestly does not constitute “best efforts,” particularly when some of the questions are relatively simple to answer.

For example, according to new whistleblower information provided to Empower Oversight, the first question in Senator Grassley’s letter should have been an easy one. Senator Grassley asked whether Acting Undersecretary Thomas Murphy was ever recommended for a suspension for improperly accepting gifts¹¹ According to the new information, the answer appears to be “yes”—on February 25, 2019. This detail should have been readily accessible in the Department’s files and known to senior Department leadership, yet the Department has failed to provide it to the Senate for four months.

The proposed suspension would have been for 10 days due to an alleged violation of 5 C.F.R. § 2635.202(b)(2) in connection with accepting a NASCAR pass valued in excess of \$500 while the VBA had an ongoing contract with NASCAR and without seeking guidance from a Department ethics official. According to whistleblower disclosures, however, on May 7, 2019, former Secretary Robert Wilkie accepted the recommendation of Assistant Secretary for Human Resources Dan Sitterly to reduce the proposed suspension to a mere admonishment for failure to seek ethics advice.¹²

Assistant Secretary Sitterly allegedly cited the fact that three separate similar instances involving Department executives and NASCAR as evidence that the rules on accepting such gifts must be unclear. Failing to hold senior leadership accountable for following rules on which Department officials receive regular training merely because multiple executives also did so would be an engraved invitation to misconduct.

The public has a compelling interest in understanding why the Department is refusing to comply with oversight requests for information from its elected representatives on these important issues of public integrity. They are of significant public importance and impact veterans’ confidence in the Department that is supposed to serve them as they served our country. Transparency from the VBA is the only way to ensure accountability. Accordingly, we are filing this FOIA request to seek the facts.

Please Provide All Records Relating to the Following:¹³

1. The Department of Veterans Affairs’ receipt of, discussions related to, processing of, and response to Senator Grassley’s April 2, 2021 letter to Secretary McDonough and/or his July 20, 2021 letter to Secretary McDonough. (Attachments A and B).

¹¹ Letter from Senator Charles Grassley to Secretary Denis McDonough ([Apr 2, 2021](#)) (Attachment A) at 4.

¹² Mr. Sitterly has also been the subject of inquiries from Senators Tester and Schatz about his transfer from a political position to a career slot in, ironically, the Office of Accountability and Whistleblower Protection. Letter from Senators Jon Tester and Brian Schatz to Secretary Robert Wilkie ([Dec 3, 2020](#)).

¹³ As used herein “record” and “communication” include any disclosure, transfer, or exchange of information or opinion, however made. The term includes letters; telegrams; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings,

2. Communications between the Department of Veterans Affairs OIG (“VA OIG”) and Department employees relating to the VA OIG’s “administrative investigation to evaluate the allegations that Ms. Charmain Bogue, Executive Director of VBA’s Education Service, may have violated applicable conflict of interest laws or regulations concerning her official duties and her spouse’s business interests.” (see Attachment B).
3. Internal communications within the Department (other than the with VA OIG), as well as communications between Department employees and any other persons, relating to the VA OIG’s investigation referenced above.
4. Any ethics opinion or recusal involving Ms. Bogue, including any related to VES, SVA, and any other entities with which her husband had a financial relationship.
5. Calendar entries and notes of any meetings between Ms. Bogue and VES/SVA representatives, including Barrett Bogue.
6. The alleged proposal to suspend Thomas Murphy for 10 days, including:
 - a. the February 25, 2019 proposal by Principal Under Secretary for Benefits Margarita Devlin,
 - b. the March 18, 2019 decision memo by Under Secretary for Benefits Paul Lawrence upholding the proposed suspension;
 - c. the April 30, 2019 decision memo summary for Secretary Wilkie from Assistant Secretary Sitterly, relative to the proposed suspension;
 - d. all communications relating to Assistant Secretary Sitterly’s April 30, 2019 decision memo summary, including the May 7, 2019 approval thereof; and
 - e. any resulting letter(s) of admonishment.
7. Communications between Department employees and any Congressional staff, member of the House of Representatives, or Senators, regarding the issues described above.

Fee Waiver Request

Empower Oversight requests a waiver of fees associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii). The information sought is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government. Empower Oversight is a non-profit educational organization as

conferences, and telephone or other conversations or communications; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; microfilm; microfiche; tape or disc recordings; and computer print-outs.

defined under Section 501(c)(3) of the Internal Revenue Code and has no commercial interest in making this request.

The public has a significant interest in understanding the Department of Veterans Affairs' response to allegations of conflicts of interests of senior Department personnel. Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination. For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. In the event our request for a fee waiver is denied or if you have any questions about this request, please contact us immediately.

Thank you for your prompt attention to this important matter.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President